

REMARKS

Claim 7 has been cancelled without prejudice. Claims 1-6 have been amended. Upon entry of the above amendments and following remarks claims 1-6 will be pending in the present application.

Applicants have provided a substitute specification as discussed in MPEP §608.01(q). Applicant have provided the required statement with regard to the substitute specification below.

Statement With Regard to Substitute Specification

Applicants have provided a substitute specification in accordance with 37 CFR 1.125(b) and MPEP §608.01(q). Applicants have provided a marked up copy and a clean copy of the substitute specification. Applicants herein state that no new matter is included in the substitute specification.

Requirements Under 35 U.S.C. §102(b) Not Met in Rejection of Claims

Claims 1-7 have been rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,868,597 to Chen. Applicants note the proper standard under 35 U.S.C. §102 for finding anticipation is that the prior art must disclose each and every limitation found in the claims, either expressly or inherently. Rockwell International Corp. v. United States, 147 F.3d 1358, 1363 (Fed. Cir. 1998); Electro Med System S.A. v. Cooper Life Sciences, 34 F.3d 1048, 1052 (Fed. Cir. 1994). Furthermore, the omission of any claimed element no matter how insubstantial is grounds for traversing a rejection based on Section 102. Connell v. Sears Roebuck & Co., 772 F.2d 1542 (Fed. Cir. 1983).

Applicants assert that Chen does not, at a minimum, disclose a device having, at least, a body having periphery and a gripping aperture adjacent to the periphery. As such, a rejection under 35 U.S.C. §102 is clearly not proper and should be withdrawn.

Claimed Invention is Non-Obvious Under a Proper 35 U.S.C. §103 Analysis

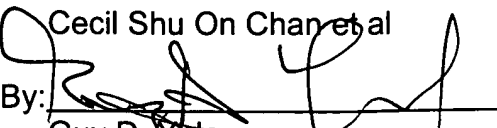
The claimed invention is additionally non-obvious with regard to Chen since there is at the minimum no suggestion or motivation present in the teaching or disclosure of Chen, or within the knowledge of one of ordinary skill in the art as evidenced by, at least, the references cited in the Office Action, to do what the Applicants have done in the claimed invention. For example, at a minimum Chen does not teach or suggest a device having a body having periphery and a gripping aperture adjacent to the periphery. Applicants note that as thoroughly discussed in a recent court holding:

“...the essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) (“the central question is whether there is reason to combine [the] references,” a question of fact drawing on the Graham factors).” In re Lee, 61 USPQ2d, 1430 (Fed. Cir. 2002)

Such a rigorous examination required by law clearly would find the claimed invention non-obvious based on at least a study of the problem to be solved by the Applicants, and the functionality of the claimed invention.

In summary, the Applicants have addressed each of the rejections within the present Office Action. It is believed the application now stands in condition for allowance, and prompt favorable action thereon is respectfully solicited.

Respectfully Submitted,

Cecil Shu On Chan et al
By: 
Guy D. Yale
Registration No. 29,125
Alix, Yale & Ristas, LLP
Attorney for Applicant

Date: August 31, 2004
750 Main Street
Hartford, CT 06103-2721
(860) 527-9211
Our Ref: MCHK/111/US

G:\AYR saved docs\Filing Docs\M C H K\MCHK.111.US Response To OA of 8.26.04.doc